

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-cv-329-GKF(SAJ)
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**STATE OF OKLAHOMA'S MOTION TO COMPEL THE CARGILL
DEFENDANTS TO MAKE A KNOWLEDGEABLE 30(b)(6) DESIGNEE
AVAILABLE FOR DEPOSITION AND INTEGRATED BRIEF IN SUPPORT THEREOF**

COMES NOW Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA (the "State"), and respectfully moves this Court for an order compelling Cargill, Inc. and Cargill Turkey Production, LLC (collectively "the Cargill Defendants") to make available a knowledgeable 30(b)(6) designee concerning the scope of the search and nature of its document production.¹ In support of its motion, the State states as follows:

1. On July 10, 2007, the State served identical sets of document requests on the Cargill Defendants.
2. Seeking to understand, *inter alia*, (1) the Cargill Defendants' search for documents responsive to the State's document requests, and (2) the manner in which the Cargill Defendants have produced documents that are responsive to the State's document requests, on

¹ Pursuant to LCvR 37.1, counsel advises the Court that the parties to this discovery dispute have met and conferred in an effort to resolve their differences but have been unable to reach an accord.

January 18, 2007, the State served deposition notices on the Cargill Defendants. *See* Exhibits A & B.

3. In response to the deposition notices, the Cargill Defendants informed counsel for the State that they would not be producing someone knowledgeable about the document requests, but rather someone simply knowledgeable about the documents themselves being produced.

Indeed, the person produced by the Cargill Defendants for deposition on March 26, 2007, had no knowledge about the State's document requests:

Q: I'll ask you again to look at [the State's July 10, 2006 requests for production].

A: Uh-huh.

Q: And if you will, read through it to make sure that you're correct in what you further -- previously testified about is that you have never read this document. Is that correct?

A: Yeah. That's correct.

Q: And that this morning was the first time that you've ever seen it?

A: Yes.

Q: Correct? All right. Can you tell me who was responsible to gather up the documents that are required or requested by this Exhibit No. 1?

* * *

A: No, I do not.

Q: Other than the few documents you saw this morning in talking to your lawyers, do you know what documents were produced in response to the Deposition Exhibit 1?

* * *

A: No, I do not.

Q: Did you have any responsibility at any time to gather up any documents in response to this Request No. 1?

A: No, I was not.

Q: Okay. Can you tell me today, how do you know what was searched to find documents that are responsive to this Deposition Exhibit 1?

A: Can you repeat that question one more time?

Q: How can you tell me today what documents were search that might be responsive to the request shown as Deposition Exhibit No. 1?

A: I don't think I can answer that.

Q: Let me ask you this question.

A: Okay.

Q: Do you understand what this document, Exhibit 1, means or does?

A: No, because I haven't read it.

Q: Okay. Let me just explain to you briefly --

- A: Sure.
- Q: -- that it is a request from the State of Oklahoma in this litigation to Cargill, and in particular this is to Cargill, Inc., asking for a list of documents totaling 125 plus maybe sub parts. Now, since you haven't read it, you say you are not responsible for gathering the documents --
- A: Uh-huh.
- Q: -- how can you tell me today what was searched at Cargill that would be responsive to this request for documents?
- A: I couldn't because I haven't read the request to know what documents were requested.

Exhibit C (Deposition of Brenda Roe, 24:23 to 27:2).

4. The State has followed up with the Cargill Defendants on its desire to depose a Cargill designee about (1) the search for documents responsive to the State's document requests, and (2) the manner in which the Cargill Defendants have produced documents that are responsive to the State's document requests. *See* Exhibit D.

5. The Cargill Defendants, however, have taken the position that "[l]egal counsel for the Cargill Defendants are the person(s) most knowledge about both." The Cargill Defendants have further taken the position that "information regarding the conduct of the Cargill Defendants' search for and production of responsive documents is privileged." *See* Exhibit E (w/o attachments); *see also* Exhibit F. The Cargill Defendants therefore refuse to produce the person most knowledgeable about the scope of the search and nature of Cargill Defendants' document production for deposition.

6. The Cargill Defendants' position is untenable.

7. First, it is clear that discovery into the scope of the search and nature of a document production is appropriate. *See, e.g., In re Grand Jury Proceedings (ABA Corporation)*, 473 F.Supp.2d 201, 208-09 (D. Mass. 2007) (. . . [T]estimony concerning the corporation's response to the subpoena may be compelled as well. There does not appear to be case law expressly holding that a custodian of records can be compelled to testify as to the scope

and nature of the records search. . . . Nonetheless, such testimony clearly can be compelled. . .") (internal quotation and citation omitted) (emphasis added).

8. Second, it is equally clear that one cannot cloak otherwise discoverable information in privilege by simply involving a lawyer. *See, e.g., In re Universal Service Fund Telephone Billing Practices Litigation*, 232 F.R.D. 669, 675 (D. Kan. 2005) ("The mere fact that one is an attorney does not render everything he does for or with the client privileged. . . . The fact that the client chose to channel the work through an attorney rather than perform the work with non-legal personnel does not provide the basis for a claim of privilege"). Having lawyers conduct the Cargill Defendants' document production does not make the scope of the search and the nature of the document production privileged.

9. Third, in any event, the designee on these matters need not be a lawyer. In a 30(b)(6) deposition, "personal knowledge of the designated subject matter by the selected deponent is of no consequence. . . . It is [the corporation's] decision who to designate as its representative in the deposition. [The corporation] is under no obligation to choose an attorney as its 30(b)(6) designee." *Sprint Communications Co., L.P. v. Theglobe.com, Inc.*, 236 F.R.D. 524, 528-29 (D. Kan. 2006). Rather, the corporation is simply "obligated to produce a deponent who has been competently prepared by the company to give complete, knowledgeable and binding answers on behalf of the corporation." *Id.*

10. Simply put, the State is entitled to depose a Cargill 30(b)(6) designee who can give "complete, knowledgeable and binding answers on behalf of the corporation" regarding the scope of the search and nature of Cargill Defendants' document production. That the 30(b)(6) designee is or is not Cargill Defendants' legal counsel is of no consequence.

WHEREFORE, premises considered, the State's Motion to Compel the Cargill Defendants to Make a Knowledgeable 30(b)(6) Designee Available for Deposition should be granted.

Respectfully Submitted,

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